



CITY OF HAYWARD AGENDA REPORT

AGENDA DATE 05/24/01

AGENDA ITEM _____

WORK SESSION ITEM A

TO: Planning Commission

FROM: City Attorney

SUBJECT: Review and Comment on the Religious Land Use and Institutionalized Persons Act

Recommendation:

It is recommended that the Planning Commission review and comment upon the following information.

Introduction:

This report is presented to apprise the Planning Commission of the enactment of the federal Religious Land Use and Institutionalized Persons Act and related planning and zoning issues.

Discussion:

The Religious Land Use and Institutionalized Persons Act ("RLUIPA") was enacted by Congress and signed into law by President Clinton on September 22, 2000. RLUIPA is a response to the perception by some legislators that local agencies have used their zoning power to discriminate against or place excessive burdens and costs on religious groups. The predecessor statute to RLUIPA was the Religious Freedom Restoration Act of 1993 ("RFRA"), which was declared unconstitutional in part by the United States Supreme Court in 1997. RLUIPA attempts to cure the constitutional defects of the RFRA. The RFRA applied to all governmental actions, including neutral laws of general applicability, and provided that the government could not place a substantial burden on a person's exercise of religion without demonstrating a compelling government interest. In contrast, RLUIPA is limited to a government's land use decisions and the right of certain institutionalized persons to exercise their religious beliefs.

Issues of Local Concern

Specifically, the RLUIPA prohibits the imposition of a "substantial burden" on the religious exercise of a person (including a religious assembly or institution) through a "land use regulation" unless the local agency demonstrates that the burden is in furtherance of a "compelling government interest" and is the "least restrictive means" of furthering that compelling government interest. In addition, the local agency shall not impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution. The local agency furthermore cannot totally exclude or "unreasonably limit" religious assemblies, institutions or structures. Finally, a local agency shall not impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

Definitions: The RLUIPA defines some of its terms but not others. A "land use regulation" is a zoning or landmarking law that restricts an applicant's use or development of land. This means that the RLUIPA does not affect a city's right to require compliance with building, fire or similar uniform codes. "Religious exercise" includes the exercise of any religion, whether or not compelled by, or central to, a system of religious belief. Under the RLUIPA, the use, building or conversion of real property shall be considered to be a religious exercise of the person or entity that uses or intends to use the property for that purpose. The legislative history of the RLUIPA suggests that it is possible the commercial activity of a religious institution (e.g., daycare or homeless shelters) may not be considered the exercise of religion, although the RLUIPA itself is silent on the issue.

The RLUIPA does not define what constitutes a "substantial burden" or an "unreasonable limitation." One Congressional representative's analysis states that an "unreasonable limitation" must be determined in light of all the facts, including the availability of land and the economics of the religious organization. Another analysis states that the RLUIPA does not provide applicants with immunity from land use regulation. Unfortunately, until there is some decisional law on the RLUIPA, this is minimal guidance at best.

The terms "compelling government interest" and "least restrictive means" likewise have not been defined under the RLUIPA. However, these terms have long been used in constitutional analysis of government regulation in other contexts. This standard of review is known as "strict scrutiny," which is the most stringent test for determining the constitutionality of governmental action.

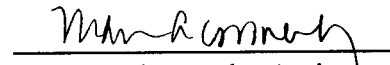
Judicial Action: The United States government or any interested person may bring a judicial action challenging a local agency's action in violation of the RLUIPA. A person who prevails on a RLUIPA claim may recover attorneys' fees and costs.

Conclusion


The constitutionality of the RLUIPA is presently undergoing legal challenge. However, until the issue of constitutionality has been resolved, local agencies must consider how best to address RLUIPA issues in its land use decisions. The burden to demonstrate that the land use regulation imposes a

substantial burden is on the applicant. The City may consider requiring a land use applicant to demonstrate that the activity being burdened is an exercise of the applicant's religion; that the regulation imposes a burden; and that the burden is a substantial one. As in all land use decisions, the City should also make the appropriate findings to support its conclusions regarding these issues.

Recommended by:


Maureen Conneely, Assistant City Attorney

Approved by:


Michael O'Toole, City Attorney